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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,812	03/13/2004	Daniel W. Kuhn		8384

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EXAMINER

SKURDAL, COREY NELSON

ART UNIT	PAPER NUMBER
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3782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/799,812	Applicant(s) KUHN, DANIEL W.	
	Examiner Corey N. Skurdal	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The office action that appears below has been made non-final due the new double patenting rejection.

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-44 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-44 of copending Application No. 10/913,771. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 24-26, 30-36, and 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Geiben (US 3,902,640).

Regarding claims 24 and 26, Geiben discloses a backpack with a lower compartment 2 formed from a rigid materials 3 and 4, the materials 3 and 4 being either metal, plastic, or rigidized fabric (col. 5 lines 4-10), such that each material is considered capable of forming self-supporting generally fixed shape compartments, the lower compartment having a top wall 12 which forms the bottom of an upper compartment (area above wall 12), the upper compartment also being formed from rigid materials 3 and 4. Geiben further discloses upper and lower compartments that form an ergonomic continuous surface between 22 and 23. Attached to the continuous surface are shoulder straps 19 and waist strap 30.

Regarding claim 25, Geiben discloses a wall 12 that serves as a shelf when the backpack is upright.

Regarding claim 30, Geiben discloses lower door 14 for accessing the inner volume of lower compartment 2.

Regarding claims 31-32 and 38-39, Geiben discloses upper and lower compartments that may be formed of single or multiple materials, column 3 lines 34-36, wherein the compartments may be thermally insulated by layer 17.

Regarding claims 33 and 40, Geiben discloses a backpack which is water tight, column 1 line 47 and 53, such that at least one layer of the pack must be impermeable to fluid, making the upper and lower compartments resistant to the escape of fluid.

Regarding claims 34-36 and 41-43, Geiben discloses the backpack support structure and body as being made from metal, plastic, or any suitable rigidized fabric,

column 5 lines 4-10. Furthermore Geiben specifically calls for use of "a light weight metal such as aluminum or magnesium or a rigid plastic," column 2 lines 23-30.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 7-14, 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaisdell et al. (US 5,184,763) in view of Pinkham et al. (US 3,064,867).

Regarding claim 1, Blaisdell discloses the invention substantially as claimed including a lower compartment 21 with a top wall and with waist strap 25 and an upper compartment 22 with a bottom wall and with shoulder straps 24. The upper compartment is shown to removably stack on top of the lower compartment by joint 13 such that back surfaces at 23 and 28 form a generally continuous surface. Blaisdell does not specifically define the device as being formed from a rigid material. However, Pinkham teaches the use of a rigid aluminum backpack 10 having a rigid body 11 for the purpose of providing a pack that is "sturdy and durable in construction." As such, it would have been obvious to one skilled in the art at the time of invention to make the body portions of Blaisdell from rigid aluminum in order to provide a pack for which protects its contents. The resulting modified Blaisdell device would be primarily formed

of aluminum, the aluminum clearly being a rigid material capable of forming self-supporting generally fixed-shape compartments.

Regarding claim 2 and 3, the modified Blaisdell device discloses the claimed invention with padded back surfaces 23 and 28, which form an ergonomic continuous surface for supporting the pack against a person's back.

Regarding claims 4 and 5, Blaisdell does not disclose the use of an upper door mounted to the upper compartment for accessing the inner volume. However, Pinkham teaches the use of a door 16 at the top of compartment 11 for the purpose of accessing the interior. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Blaisdell with an upper door mounted to the upper compartment 22 in order to provide easy access to the contents of the container. In doing so the upper door would be attached to the backpack, wherein the backpack itself may be considered a container.

Regarding claims 7 and 8, the modified device of Blaisdell discloses the claimed invention wherein when the upper and lower compartments are separated, "the lower module 21 can be used as a waist pack" and the "upper module 22 can be used as a day pack," see column 3 lines 59-61.

Regarding claim 9, the modified device of Blaisdell is capable of being used in the claimed manner. With the waist strap removed and the compartments separated, the lower compartment forms a generally horizontal surface such that with a heat source placed inside, the compartment could be used for cooking, effectively satisfying the claim.

Regarding claims 10-14 and 17-21 the modified Blaisdell device discloses the claimed invention wherein the upper and lower compartments are formed from at least one layer of material, that layer being aluminum with an insulating property.

Furthermore, as Pinkham discloses "a water tight pack" (column 2 line 52), the modified Blaisdell device includes a layer of material that is impermeable to fluid and resistant to the escape of fluid.

7. Claims 6, 15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaisdell et al. in view of Pinkham et al. and in further view of Geiben.

Regarding claim 6, the modified device of Blaisdell discloses the invention substantially as claimed as applied to claim 1 above, but does not disclose a lower door mounted to the lower compartment. However, Geiben teaches the use of lower door 14 for accessing the inner volume of lower compartment 2. Therefore it would have been obvious to one skilled in the art at the time of invention to provide the modified device of Blaisdell with a lower door in order to gain easy access to the lower compartment.

Regarding claims 15 and 22, the modified device of Blaisdell discloses the invention substantially as claimed as applied to claims 1 and 10 above, but does not disclose the use of a plastic layer. However, Geiben teaches the use of a rigid backpack which may be formed of a variety of materials and layers, including a rigid plastic, (column 2 lines 23-25). Therefore it would have been obvious to one skilled in the art at the time of invention to provide the modified Blaisdell device with a plastic layer in order to make the backpack cheaper and easy to manufacture.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blaisdell et al. in view of Pinkham et al. and in further view of Watt (US 5,462,213). The modified device of Blaisdell discloses the invention substantially as claimed as applied to claim 1 above, but does not disclose the use of support elements attached to the bottom of the lower compartment. However, Watt teaches the use of support elements 50 for creating a steady base for holding the pack in the upright position. Therefore it would have been obvious to one skilled in the art at the time of invention to provide the modified Blaisdell device with support elements at the lower compartment base in order to create a stable base.

9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blaisdell et al. in view of Pinkham et al. and in further view of Hodosh (US 5,924,303). The modified device of Blaisdell discloses the invention substantially as claimed as applied to claim 1 above, but does not disclose the use of cylindrical container holders formed in the top of the upper compartment. However, Hodosh teaches the use of can and bottle holders 15 and 16 located in the top of a receptacle with a carrying strap. Therefore it would have been obvious to one skilled in the art at the time of invention to provide the modified Blaisdell device with cylindrical container holders in order to create additional holders for cans, bottles and the such.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiben in view of Blaisdell. Geiben discloses the invention substantially as claimed as applied to claim 24 above, but does not disclose the use of padding attached to the continuous surface. However, Blaisdell teaches the use of padding 23 and 28 for the purpose of

improving the users comfort. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Geiben with padding on the continuous surface in order to increase the comfort of the backpack.

11. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiben. Geiben discloses the invention substantially as claimed but does not have an upper door as claimed. However, Geiben does teach the use of a lower door 14 for access to the lower compartment. As such it would have been obvious to also provide an upper door mounted to the exterior surface of the upper compartment in order to provide easy access to the interior of the upper compartment. In doing so, an upper door would be formed on a non-removable section of the upper compartment, such that the upper door is attached to the backpack, the backpack itself being considered a container.

12. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiben in view of Watt (US 5,462,213). Geiben discloses the invention substantially as claimed as applied to claim 24 above, but does not disclose the use of support elements attached to the bottom of the lower compartment. However, Watt teaches the use of support elements 50 for creating a steady base for holding the pack in the upright position. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Geiben with support elements at the lower compartment base in order to create a stable base.

13. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiben in view of Hodosh (US 5,924,303). Geiben discloses the invention substantially as

claimed as applied to claim 24 above, but does not disclose the use of cylindrical container holders formed in the top of the upper compartment. However, Hodosh teaches the use of can and bottle holders 15 and 16 located in the top of a receptacle with a carrying strap. Therefore it would have been obvious to one skilled in the art at the time of invention to provide Geiben with cylindrical container holders in order to create additional holders for cans, bottles and the such.

Response to Arguments

14. Applicant's arguments filed 5/30/2007 have been fully considered but they are not persuasive.

Regarding claim 1, Applicant has argued that the combination of Blaisdell and Pinkham fails to teach compartments formed from a rigid self supporting material, and further that they lack suggestion to combine and any expectation of success. However, Blaisdell clearly teaches the general structure of the claimed backpack except for the material, instead only indicating that stays 14 and 18 are used for support. Pinkham is relied upon only to teach that it is well known to make the body portion of a backpack from metal. Furthermore, the claim as written does not restrict the invention from backpacks that have a support/frame and a module/body portion, rather only that some material which forms the compartments must be rigid and self supporting.

In response to applicant's argument that there is no suggestion to combine the references (Blaisdell, Pinkham and Geiben), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation

Art Unit: 3782

to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Pinkham and Geiben have been relied upon to teach various types of materials which may be used to form the main body portion of a backpack.

Regarding claims 4 and 5, see paragraph 4 above.

Regarding claim 24, Applicant has argued that Geiben fails to teach lower and upper compartments formed from rigid material capable of forming self supporting generally fixed shaped compartments. However, Geiben teaches multiple configurations of materials, in particular noting col. 5, lines 1-14, in which the body and supporting structure may be made from metal. Certainly a body made from metal constitutes a material capable of forming self supporting generally fixed shaped compartments. Furthermore, Geiben discloses that the "pack can be molded from one material" such that there is no distinction between an external body and an internal support structure (see col. 5, line 12, and col. 2, lines 27-30).

Regarding claims 28 and 29, Applicants arguments are moot in view of the new grounds of rejection, see paragraph 9 above.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey N. Skurdal whose telephone number is 571-272-9588. The examiner can normally be reached on M-Th 8am-4pm.

Art Unit: 3782

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CNS
8/7/07


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